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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/149255

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 07, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 18, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the evidence offered on behalf of Petitioner demonstrates that a prior authorization request for physical therapy meets the standards necessary for payment by the Wisconsin Medicaid program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Pamela J. Hoffman, PT, DPT, MS  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.

2. A prior authorization request seeking Wisconsin Medicaid program payment for physical therapy (PT) for Petitioner was filed with the Medicaid program on or about March 26, 2013. The request was for 26 sessions at a frequency of once per week at a cost of \$4368.00. The PA requested Medicaid payment for therapeutic exercises, gait training, neuromuscular reeducation and therapeutic activities.
3. The PA noted Finding # 2 was approved in part, 13 sessions were approved for the period from April 9, 2013 through October 8, 2014.
4. Petitioner is 4 years old (03/21/2008). She lives in the community with her parents. Her diagnosis is hypoplas left heart syndrome and developmental delays. Her PA also notes chromosomal deletion, moderate scoliosis, calcaneal valgus foot deformity and sensory integration dysfunction. She had heart surgery in September 2012. She will be in K5 this fall, 5 half days per week in a private school with no PT services.

### **DISCUSSION**

When determining whether to approve therapy, the Department must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m).*

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

The OIG submitted a letter dated May 15, 2013 that explained in detail the rationale for the denial. See Ex. # 3. In brief, the department noted that the provider did not provide metrics as to Petitioner's respiratory rate, heart rate - at rest and with activity, specific muscle strength is, the distance Petitioner is able to walk - with or without assistance, etc. the provider did not document how Petitioner's physiological needs interrelate with the requested therapy. The department further notes that Petitioner appears to be able to walk, run, get up and down from the floor and go up and down stairs. The PA notes concern about Petitioner getting on and off of furniture but the PA does not connect that to a particular physical deficit. Nonetheless, the agency did approve 13 sessions; apparently, in tacit recognition of Petitioner's need to recover from the 2012 surgery, the fact that her own mother's health problems make a home program less effective than it might otherwise be and the fact that Petitioner's grandmother, also a participant in her care, has passed away.

Arguments advance on behalf of Petitioner emphasis that she is behind her peers and needs to be able to keep up with them as school starts.

The arguments noted in the Department's May 15, 2013 letter are the more persuasive here. Despite deficits in the request, it is apparent that Petitioner is in need of some combination of strength, balance, endurance and coordination exercises and this is best accomplished via repetition and practice. A consistent home program and integration of activity into daily routines is really the only way to effectively do this. The approved sessions were intended to work towards that model and are sufficient to do so.

*NOTE: Petitioner should be aware that Petitioner's provider will not receive a copy of this Decision. Petitioner's family may provide a copy to the provider.*

### **CONCLUSIONS OF LAW**

That the evidence does not demonstrate that the requested PT sessions meet the standards necessary for payment by the Wisconsin Medicaid program beyond those already approved by the Medicaid program.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

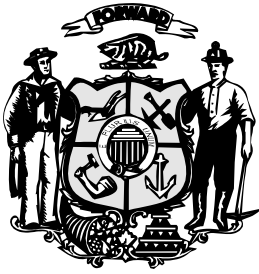
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of July, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 29, 2013.

Division of Health Care Access And Accountability